adjourn the proceedings because the grounds of the decision complained of did not appear. In my view the correct practice is this. If the appellant alleges an error in law or a wrong exercise of discretion he should ask the Registrar to record the reasons for his decision and these should be put on the file before the matter comes before a Judge; usually they are not lengthy and no delay will result. In a minority of cases, of which is this one, it is conceded that the Registrar's decision was correct, as the case was presented to him, and the "appeal" is based on fact not then known or arising later; in such circumstances his reasons are not required.

Order accordingly.

Solicitors: *R. C. H. Lim & Co.; Braddell Bros.*

DAENG MOHAMADALLY v. THANAPAKIAM

[A. C. J. (Chua J.) March 14, 1957]

[Singapore — District Court Appeal No. 6 of 1956]

Landlord and Tenant — Licence or tenancy — Intestate tenant — Notice to quit — Service on person in occupation.

The Courts should only infer a new tenancy where the facts truly warrant it. The test to be applied in Rent Control Cases is the same test as that laid down by Lord Mansfield in cases of holding over: "The question therefore is, *quo animo* the rent was received, and what the real intention of both parties was?"

Where the tenant had abandoned the tenancy and is dead the landlord may determine the tenancy by serving a notice to quit on the occupier of the premises.

[Editorial Note: See Note on "Validity of Notice to Quit" in (1952) M.L.J. xxiii].

Cases referred to:—

(1) *Marcroft Wagons Ltd. v. Smith* (1951) 2 K.B. 496.

(2) *Harrowby (Earl of) v. Snelson* (1951) 1 All E.R. 140.

(3) *Sweeny v. Sweeny* (1876) I.R. 10 C.L. 375.

(4) *Weimberg v. Lim Seow Peng* (1955) M.L.J. 152.

DISTRICT COURT APPEAL.

P. F. X. Leonard for the appellant.

L. A. J. Smith for the respondent.

Chua J.: — This is an appeal from the judgment of the learned District Judge relating to the possession of premises No. 10 Kirk Terrace, Singapore.

It is not disputed that the said premises are subject to the provisions of the Control of Rent Ordinance 1953.

The facts are these. Sometime in March 1942 the said premises were let out by the then owner to one Mohamed Ariff, the brother of the appellant, but it was the appellant who lived in the said premises from that date and who paid the rent to the landlord. The rent receipts, however, were in the name of Mohamed Ariff. Mohamed Ariff never resided at No. 10 Kirk Terrace.

On the 9th October 1954 the respondent bought the said premises and she was informed by the vendor that the tenant of the said premises was Mohamed Ariff. The rent for October 1954 was paid to the respondent who issued the receipt in the name of Mohamed Ariff.

Mohamed Ariff died on the 30th September 1954 but this fact came to the knowledge of the respondent only after the October rent had been paid. On the 22nd November 1954 the respondent served a notice to quit on the appellant and the widow of Mohamed Ariff.

In the District Court the respondent claimed possession of the said premises on the ground that the appellant was a trespasser. The appellant contended that he was the real tenant of the said premises. The learned District Judge rejected the contention of the appellant and gave possession to the respondent.

At the hearing of this appeal, Counsel for the appellant conceded that originally Mohamed Ariff became the tenant of the said premises but submitted that the appellant was an assignee, express or implied, of Mohamed Ariff or alternatively he was a sub-tenant at will of Mohamed Ariff. These points were never raised in the District Court.

Counsel for the appellant pointed out that the appellant had exclusive occupation of the said premises and that was by reason of an agreement between the appellant and Mohamed Ariff. But is exclusive occupation alone sufficient to support the contention that there was an assignment of the tenancy by Mohamed Ariff to the appellant? I do not think so. There was no assignment in writing. On the 26th September 1947 Mohamed Ariff was served with a notice (Exhibit P6) by the landlord asking him to quit and offering him a fresh tenancy on new terms if he wished to remain. The acceptance of the offer of the fresh tenancy was signed by the appellant on behalf of his brother. If there had already been an assignment of the tenancy to the appellant by his brother why did he not inform the landlord? I hold that there was no assignment of the tenancy to the appellant.

Counsel for the appellant also urged upon me that if there was no assignment of the tenancy then as the appellant had exclusive occupation and was paying the rent of the said premises to the landlord it was the intention of Mohamed Ariff that the appellant should become his sub-tenant at will. As pointed out by Counsel for the respondent this was an issue which had to be decided on the evidence. In the lower court the appellant claimed that he was the real tenant, he did not claim that he was the sub-tenant of Mohamed Ariff.

Mr. Megarry, in his book "The Rent Acts", 7th edition at page 45, has this to say of "Licensees" :—

"It is often a matter of great difficulty to determine whether a transaction creates a licence or a tenancy. The advent of the Rent Acts has greatly increased the importance of the distinction, and authorities prior to the Acts must be regarded with some caution. In particular, the existence of a right to the exclusive possession of the property is no longer conclusive in favour of a tenancy, for the courts have now evolved a new type of licence — 'a permissive occupation falling short of a tenancy' — which confers the right to exclusive possession of the premises and, indeed, has most of the attributes of a tenancy, yet lacks 'the estate in land which is a necessary incident of a tenancy'. Such a licence may conveniently be called a 'possessory licence' in order to distinguish it from the more orthodox type of licence which gives no right to exclusive possession but merely legitimises acts which would otherwise be trespasses."

In the case of *Marcroft Wagons Ltd. v. Smith*[1], Denning L.J. in the course of his judgment at page 506 said :—

"They (the Courts) should only infer a new tenancy when the facts truly warrant it. The test to be applied in Rent Restriction acts cases is the same test as that laid down by Lord Mansfield in cases of holding over: 'The question therefore is, *quo animo* the rent was received, and what the real intention of both parties was?' ".

This Court, therefore, has to consider whether there are any facts from which an intention to create a sub-tenancy can be inferred. There is no evidence that the appellant ever paid any rent to his brother and there is no evidence that there was any intention on the part of Mohamed Ariff to create a sub-tenancy. The appellant is therefore only a "licensee" and as such he is not protected by the Rent Control Ordinance.

Counsel for the appellant also contended that the tenancy had not been lawfully terminated. He said that service of the notice to quit on the appellant and on the widow of Mohamed Ariff was not sufficient to terminate the tenancy in this Colony although such service would terminate the tenancy under the law in England but counsel, however, cited no authority for this proposition.

We have in evidence that Mohamed Ariff never resided at No. 10 Kirk Terrace right from the inception of the tenancy. There is also evidence that Mohamed Ariff's widow never resided at No. 10 Kirk Terrace and she is not interested in the said premises. It is clear, therefore, that Mohamed Ariff had during his life time abandoned possession of the said premises. Such being the case I think it is necessary only to serve the notice to quit on the appellant as the person in occupation of the said premises. If authority is needed it can be found in the case of *Harrowby (Earl of) v. Snelson*[2]. That case decided that although on the death of a tenant intestate the tenancy had vested in the President of the Probate Divorce and Admiralty Division by virtue of section 9 of the Administration of Estates Act, 1925, the landlord could nevertheless determine the tenancy by serving a notice to quit on the occupiers of the premises. Cassels J., in the *Harrowby* case quoted with approval Dowse, B., in *Sweeny v. Sweeny*[3] where he said :—

"Why should he (the landlord) be placed in a worse position by the death of the tenant then he would have been if the tenant had lived? . . . when the tenant is dead the landlord should be entitled to treat the person he finds in possession as the representative of the estate and deal with him and it accordingly".

Another point taken by Counsel for the appellant was that if the appellant was a licensee then the estate of Mohamed Ariff should have been joined in these proceedings and he cited as his authority the case of *M. Weinberg v. Lim Seow Peng*[4]. In that case ejectment proceedings were taken by the landlord against the husband of the tenant, whilst she was abroad. An order for possession was accordingly made against him by the High Court. The husband appealed and the Court of Appeal held that once a person was in possession he could only be deprived of the protection of the Control of Rent Ordinance by going out of possession or having an order for possession made against him and as the tenant had not abandoned her rights over the premises, the effect of the order for possession against her husband would be to deprive her of those rights and therefore the appeal must be allowed.

The present case is complicated by the fact that the tenant Mohamed Ariff had died and there is no personal legal representative who can be joined in these proceedings. Counsel for the appellant suggested that if no one had taken out Letters of Administration then the respondent could have joined the widow of Mohamed Ariff in these proceedings. The answer to that of course is that the widow has no standing unless she has been granted Letters of Administration or she is in occupation of the said premises. As I have said earlier Mohamed Ariff had during his life time abandoned possession and his widow has never been in occupation of the said premises and it is therefore unnecessary to join the Estate of Mohamed Ariff or the widow of Mohamed Ariff in these proceedings.

For these reasons the appeal is dismissed with costs and I order that the deposit be paid to the respondent's solicitor.

Appeal dismissed.

Solicitors : *Sisson & Delay; Donaldson & Burkinshaw.*